

ESTTA Tracking number: **ESTTA326077**

Filing date: **01/11/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Cherokee Nation Entertainment, L.L.C.
Granted to Date of previous extension	01/13/2010
Address	777 West Cherokee Street Catoosa, OK 74015 UNITED STATES
Attorney information	Anthony J. Jorgenson Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. 320 South Boston Avenue Suite 200 Tulsa, OK 74103 UNITED STATES ajorgenson@hallestill.com Phone:(918) 594-0400

Applicant Information

Application No	77731942	Publication date	09/15/2009
Opposition Filing Date	01/11/2010	Opposition Period Ends	01/13/2010
Applicant	Spell C. LLC 6835 Valjean Avenue Van Nuys, CA 91406 UNITED STATES		

Goods/Services Affected by Opposition


Class 003. All goods and services in the class are opposed, namely: Cosmetics, namely, beauty cream, cold cream, vanishing cream, rouges, eyebrow pencils, mascara, blushes and nail polish, suntan lotion; non-medicated hair care preparations; and non-medicated skincare preparations, namely wrinkle-removing skin care preparations, skin abrasive preparations, skin lotion, and skin moisturizer

Grounds for Opposition


Immoral or scandalous matter	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Applicant's proposed mark has not acquired sufficient distinctiveness under Section 2(f) of the Trademark Act and registration of Applicant's proposed mark would violate the federal government's trust obligation to federally recognized Indian tribes.


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2961563	Application Date	04/21/2004
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	CHEROKEE CASINO RESORT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Entertainment services, namely, providing golf course and gaming facilities Class 043. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Resort lodging, hotel, restaurant and bar services		


U.S. Registration No.	2961562	Application Date	04/21/2004
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	CHEROKEE HILLS GOLF CLUB		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2004/09/08 First Use In Commerce: 2004/09/08 Entertainment services; namely, providing golf course facilities		

U.S. Registration No.	3426163	Application Date	08/27/2007
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	TEAM CHEROKEE		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2006/08/06 First Use In Commerce: 2006/08/06 customer loyalty services and customer club services, for commercial, promotional and/or advertising purposes</p> <p>Class 041. First use: First Use: 2006/08/06 First Use In Commerce: 2006/08/06 conducting and providing facilities for special events featuring casino and gaming contests and tournaments; gambling services; casinos; conducting and providing facilities for special events featuring casino and gaming contests and tournaments; entertainment services, namely, arranging and conducting of competitions for casinos and gaming events; entertainment in the nature of competitions in the field of casinos and gaming; providing casino facilities; providing facilities for gaming tournaments; entertainment in the nature of gaming tournaments; entertainment services, namely, conducting live poker, blackjack and other Class II and III card game tournaments</p>

U.S. Registration No.	3690437	Application Date	08/27/2008
Registration Date	09/29/2009	Foreign Priority Date	NONE
Word Mark	CHEROKEE STAR REWARDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 041. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 Providing casino services featuring stored value membership cards for redeeming cash, discounts and other benefits</p>		

U.S. Registration No.	3693880	Application Date	08/27/2008
Registration Date	10/06/2009	Foreign Priority Date	NONE

Word Mark	CHEROKEE STAR REWARDS
Design Mark	
Description of Mark	The mark consists of the words "CHEROKEE STAR REWARDS" in white, located to the right of the seven pointed "Cherokee" Nation star symbol in gray and white, surrounded by an alternating white and black circle, all on a red background.
Goods/Services	Class 035. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 arranging and conducting incentive reward programs to promote the sale of gaming, casino, hotel and resort services

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE NATION ENTERPRISES		
Goods/Services	Numerous goods and entertainment, advertising and business services.		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CHEROKEE NATION ENTERTAINMENT		
Goods/Services	Numerous goods and entertainment, advertising and business services.		

Related Proceedings	The Cherokee Nation, a federally recognized Indian tribe has filed an opposition proceeding involving the same mark.
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Attachments	78405573#TMSN.jpeg (1 page)(bytes) 78405555#TMSN.jpeg (1 page)(bytes) 77265446#TMSN.jpeg (1 page)(bytes) 77557222#TMSN.jpeg (1 page)(bytes) 77557255#TMSN.jpeg (1 page)(bytes) DOC034.PDF (7 pages)(209884 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Anthony J. Jorgenson/
Name	Anthony J. Jorgenson

Date	01/11/2010
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No.: 77731942

For the mark: **CHEROKEE**

Published in the Official Gazette on: September 15, 2009

**CHEROKEE NATION
ENTERTAINMENT, L.L.C.,**

Opposer,

v.

Opposition No. _____

**SPELL C. LLC, a Delaware limited liability
company,**

Applicant.

NOTICE OF OPPOSITION

Cherokee Nation Entertainment, L.L.C.
777 West Cherokee Street
Catoosa, OK 74015

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is a limited liability company organized under the laws of the Cherokee Nation, a federally recognized Indian tribe.
2. Opposer is wholly owned by Cherokee Nation Businesses, L.L.C., a limited liability company organized under the laws of the Cherokee Nation, which is in turn wholly owned by the Cherokee Nation. Opposer's principal purpose is to help in the management of business affairs and/or commercial functions of the Cherokee Nation.

3. Opposer operates six casinos, two golf courses, a 236-acre horse racetrack, two convenience stores, seven retail tobacco shops, and two gift shops. Opposer employs over 2,800 persons. Twenty-five percent of Opposer's net profits are paid to the Cherokee Nation to fund governmental and other services to citizens of the Cherokee Nation.

4. The Cherokee Nation is a federally recognized Indian tribe that provides governmental services to tribal citizens. There are approximately 109,724 citizens who live within the Cherokee Nation's Tribal Jurisdictional Service Area and approximately 268,761 citizens dispersed throughout the world.

5. Opposer has used the marks **CHEROKEE NATION ENTERTAINMENT** and/or **CHEROKEE NATION ENTERPRISES** in conjunction with its goods, entertainment services and/or advertising and business services since April 4, 1996. Opposer's use of the marks **CHEROKEE NATION ENTERTAINMENT** and/or **CHEROKEE NATION ENTERPRISES** in conjunction with its goods, entertainment services and/or advertising and business services directly benefits the Cherokee Nation and its citizens.

6. Opposer is also the owner of the following U.S. Trademark Registrations: Registration No. 2961563 for the mark **CHEROKEE CASINO RESORT**, issued June 7, 2005; Registration No. 2961562 for the mark **CHEROKEE HILLS GOLF CLUB**, issued June 7, 2005; Registration No. 3426163 for the mark **TEAM CHEROKEE**, issued May 13, 2008; Registration No. 3690437 for the mark **CHEROKEE STAR REWARDS**, issued September 29, 2009; and Registration No. 3693880 for the mark **CHEROKEE STAR REWARDS**, plus design, issued October 6, 2009 (the "Related Registrations"). The "Related Registrations" operate as prima facie and/or conclusive evidence of Opposer's ownership of the marks set forth

therein in exclusive right to use same in connection with the goods and/or services listed in those registrations. 15 U.S.C. §§ 1065 and 1115(b).

7. Since its initial use of its **CHEROKEE NATION ENTERPRISES** mark, more recently its **CHEROKEE NATION ENTERTAINMENT** mark, and the Related Registrations, Opposer has continuously used, advertised, promoted, and offered its goods, as well as its entertainment services and/or advertising and business services under the **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** mark and the Related Registrations, with the result that individuals have come to know and recognize Opposer's **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations and to associate the same with Opposer and/or Opposer's goods and services.

8. On information and belief, on May 7, 2009, Applicant filed an Application for Registration of the mark **CHEROKEE**. The application was assigned Serial No. 77731942, and was published for opposition in the Official Gazette of September 15, 2009, for:

Cosmetics, namely, beauty cream, cold cream, vanishing cream, rouges, eyebrow pencils, mascara, blushes and nail polish, suntan lotion; non-medicated hair care preparation; and non-medicated skincare preparations, namely wrinkle removing skin care preparations, skin abrasive preparations, skin lotion, and skin moisturizer

in International Class 003.

9. On information and belief, Applicant's goods are and/or will be advertised, promoted, and offered through the same and/or similar channels of trade and to the same general class of individuals as Opposer's services are offered under Opposer's **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations. Without limiting the generality of the foregoing, Opposer operates several casinos

and related resort and entertainment enterprises under the Related Registrations and the **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks, including restaurants, hotels, a golf course, gift shops, and resort facilities which currently do, or will in the future, offer goods similar to the goods offered by Applicant.

10. Applicant's **CHEROKEE** mark so closely resembles Opposer's **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations that the registration and use of **CHEROKEE** by Applicant is likely to cause confusion, mistake and deception within the meaning of Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)) and will result in irreparable damage and injury to Opposer.

11. Applicant's **CHEROKEE** mark so closely resembles Opposer's **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations that the registration and use of **CHEROKEE** by Applicant will falsely suggest a connection with Opposer in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)) and will result in irreparable damage and injury to Opposer.

12. Applicant's **CHEROKEE** mark is misrepresentative of some connection and/or association with the Cherokee Nation and/or Opposer and is deceptive in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)).

13. Applicant's proposed registration and use of the mark **CHEROKEE** is disparaging to Opposer, the Cherokee Nation, and its citizens, and will bring Opposer's **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations into disrepute in violation of Section 2(a) of the Trademark Act of 1946 (15 U.S.C. § 1052(a)), and will result in irreparable damage and injury to Opposer.

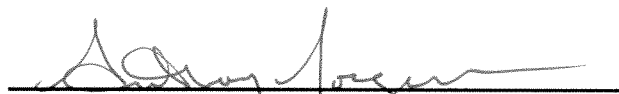
14. Applicant's **CHEROKEE** mark is not entitled to registration because Applicant's use of the **CHEROKEE** has been insufficient and therefore the mark has not acquired sufficient distinctiveness under Section 2(f) of the Trademark Act of 1946 (15 U.S.C. § 1052(f)).

15. Opposer is wholly owned by Cherokee Nation Businesses, L.L.C., a limited liability company organized under the laws of the Cherokee Nation. Cherokee Nation Businesses, L.L.C. is, in turn, wholly owned by the Cherokee Nation, a federally recognized Indian tribe. The United States government owes a fiduciary trust obligation to federally recognized Indian tribes. Among other things, the federal government is obligated to ensure that Indian property is protected. For the Trademark Office, that obligation means the protection of Indian tribes' specific items of intellectual property -- in this case, the Cherokee Nation's rights in the term, **CHEROK EE** as well as its businesses' rights in similar marks. Applicant's proposed appropriation, registration and use of the mark **CHEROKEE** will falsely lead consumers to believe that Applicant's goods are made by, sponsored by, and/or otherwise affiliated with, Opposer and/or the Cherokee Nation and will prohibit Opposer from using its own name to identify such goods now or in the future in violation of the federal government's trust obligation to Opposer.

16. Opposer believes that it will be damaged by the registration by Applicant of the **CHEROKEE** mark, as set forth in Applicant's Application, Serial No. 77281430, and that if registration on the opposed application is granted, and the presumptions accorded to such registration are conferred under the Trademark Act of 1946, as amended, Applicant will receive benefits to which they are not entitled, to the damage and detriment of Opposer, and its **CHEROKEE NATION ENTERPRISES** and **CHEROKEE NATION ENTERTAINMENT** marks and the Related Registrations.

WHEREFORE, and in view of Opposer's use of the marks **CHEROKEE NATION ENTERPRISES, CHEROKEE NATION ENTERTAINMENT**, and the Related Registrations to which Applicant's mark is confusingly similar, Opposer prays that this opposition be sustained and that registration of the mark **CHEROKEE**, based on Applicant's Application, Serial No. 77731942, filed May 7, 2009, be refused and denied.

Respectfully submitted this 11th day of January, 2010.

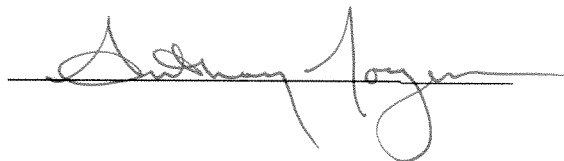


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**ATTORNEYS FOR OPPOSER,
CHEROKEE NATION
ENTERTAINMENT, LLC**

CERTIFICATE OF TRANSMISSION

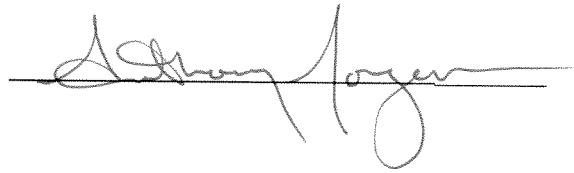
I hereby certify that this correspondence is being electronically transmitted via ESTTA to the United States Patent and Trademark Office on this 11th day of January, 2010.



CERTIFICATE OF SERVICE

I, the undersigned, pursuant to Trademark Trial and Appeal Board Rules 2.111 and 2.119, do hereby certify that on the 11th day of January, 2010, a true and correct copy of the above and foregoing NOTICE OF OPPOSITION was sent by U.S. Mail, first-class, with proper postage thereon fully paid, to:

Rod S. Berman, Esq.
Jeffer, Mangels, Butler & Marmaro, LLP
1900 Avenue of the Stars FL-7
Los Angeles, CA 90067-4308

A handwritten signature in black ink, appearing to read "Rod S. Berman", is written over a horizontal line.

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